

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASE NO. 23-CR-00204-MIS

**TRAPPER KILLSMANY,
a.k.a “David Goldsmith,”**

Defendant.

**UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE PRETRIAL
MOTIONS AND MOTION TO CONTINUE CALL OF CALENDAR AND TRIAL**

COMES NOW, the Defendant, Trapper Killsmany, by and through his attorney of record, Gia McGillivray, Assistant Federal Public Defender, and pursuant to 18 U.S.C. §3161(h)(7)(A) respectfully moves this Court to extend the time within which to file motions, to continue the call of calendar, and to continue the trial, which is currently scheduled on the April 17, 2023 trailing trial docket. Defense counsel requests that this Court issue an Order to continue all scheduled deadlines for 60 days.

As grounds therefore, Defendant states:

1. On February 22, 2023, Mr. Killsmany was indicted on one count of retaliating against a federal employee by false claim, in violation of 18 U.S.C. § 1521. (Doc. 2.) Mr. Killsmany pled not guilty to the indictment on March 2, 2023. (Doc. 11.)
2. Pre-trial motions are due March 23, 2023, the call of calendar is set for March 13, 2023, and trial is scheduled on the April 17, 2023 trailing trial docket.
3. This case was initiated by Indictment so defense counsel did not have the benefit of pre-indictment discovery. Defense counsel received discovery this week. Counsel has not had

time to review the discovery with Mr. Killsmay. Counsel will need time to review discovery, conduct an investigation, file any necessary motions and explore any negotiations.

4. Defense counsel will be out of the office from April 5, 2023, through April 9, 2023.
5. It would be a miscarriage of justice for the Defendant not to have sufficient time to review discovery, conduct an investigation, and explore negotiations with the government prior to determining whether to proceed through trial.
6. This is the first request for a continuance filed by the defense.
7. The Defendant is in custody.
8. Assistant United States Attorney Ryan Ellison but advised that he does not oppose this request.
9. Pursuant to 18 U.S.C. § 3161(h)(7)(A), the undersigned affirmatively states that the ends of justice will be served by granting this continuance of the motions deadline, the call of the calendar and the trial date. Further, the undersigned represents that the need to review all discovery and investigate this case thoroughly outweighs the interest of the public and the Defendant in a speedy trial. Defendant agrees to this request and waives his speedy trial rights to the extent such waiver is necessary to grant the extension of time requested herein.
10. In United States v. Toombs, 574 F.3d 1262 (2009), the Court stated that a defendant, by motion, must create a sufficient record to justify granting the motion to continue. *See id.*, 574 F.3d at 1271 (requiring that the record on a motion to continue “contain an explanation of why the mere occurrence of the event identified by the party as necessitating the continuance results in the need for additional time”). Counsel has reviewed the holding in

Toombs, and confirms that a continuance is necessary.

WHEREFORE, Defendant respectfully prays that this Court enter an Order extending the time within which to file motions and continuing of the call of calendar and the trial set on the April 17, 2023 trailing trial docket for a period of 60 days,

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
506 S Main Street, Suite 400
Las Cruces, NM 88001
(575) 527-6930

Electronically filed (March 10, 2023)

By: /s/ Gia McGillivray

Gia McGillivray

Assistant Federal Public Defender